

DECISION



119558
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-208086

DATE: September 24, 1982

MATTER OF: Timberland-McCullough, Inc.

DIGEST:

Where the performance of a preliminary road location survey does not require professional architect-engineer services and is independent of an architect-engineer project, competitive procurement procedures should be used in lieu of the selection method prescribed in the Brooks Act.

Timberland-McCullough, Inc. protests the use of standard competitive procedures to secure preliminary road location surveying (P-line surveying) in the Unpqua National Forest, Oregon, under Forest Service request for proposals No. R6-15-32-63. Timberland-McCullough argues that the surveying should be procured in accordance with the special procedures set forth in the Brooks Act for the Federal Government's procurement of architect-engineer (A-E) services. See 40 U.S.C. § 541 et seq. (1976).

We deny the protest.

We have held that both the language of the Brooks Act and its legislative history indicate that the Act's procedures, which do not include price competition, apply whenever the state in which the desired services are to be performed requires an A-E firm to meet a particular degree of professional capability in order to perform them, or the services logically or justifiably may be performed by a professional A-E firm and are incidental to A-E services which clearly must be procured by the Brooks Act method. Ninneman Engineering--reconsideration, B-184770, March 9, 1977, 77-1 CPD 171.

We considered precisely the issue raised by Timberland-McCullough in our decision Umpqua Surveying Company, B-199348, December 15, 1980, 80-2 CPD 429, and we concluded that the procurement of P-Line surveying in the Umpqua National Forest was not subject to the Brooks Act. We found that the services did not meet the first criterion noted because, as here, the solicitation required only that the contractor have a land surveyor licensed in Oregon, and the Oregon licensing requirements for land surveyors are separate and distinct from licensing requirements for architects and engineers. Concerning the second criterion, we noted that while P-Line surveying logically or justifiably could be performed by an A-E firm, the surveying involved was independent of any actual A-E project; that also is the case here. We therefore held that the P-Line surveying was not incidental to professional A-E services which must be procured by the Brooks Act method.

Timberland-McCullough nonetheless suggests that its view is supported by the legislative history of section 2855 of the recent Military Construction Codification Act, Pub. L. No. 97-214, 96 Stat. 153, 166 (1982), in which Congress expressly required that contracts for A-E services in connection with military construction and family housing projects be procured by the Brooks Act method. The legislative history includes the following statement:

"* * * Architectural and engineering services and construction design include all engineering services and design required for a proposed military construction project-site investigations, surveys and mapping, sketches, preparation of cost estimates for construction and land acquisition projects, plans, specifications and construction contract documents." (Emphasis added.)
H.R. Rep. No. 612, 97th Cong., 2d Sess.
19 (1982).

While Timberland-McCullough concedes that this statute does not apply to Forest Service procurements, the firm contends that it reflects Congress' position that surveying is by definition a professional A-E service which must be acquired through the Brooks Act procedure.

In our view, however, the quoted statement only reflects Congressional recognition that, when construction is involved, surveying, mapping, etc. will be A-E services subject to the Brooks Act method. Our position on the services to which the Brooks Act applies essentially leads to the same conclusion, since in the construction context a survey certainly will be incidental to other A-E services to which the statute clearly applies (if surveying is not itself the subject of a state A-E licensing requirement), so that it should be procured the same way. We see no reason, however, to conclude that the Congress' view extends to surveys that are not related to construction projects, since the Congress simply did not address that situation. Rather, it remains our position that in such case the Brooks Act itself makes the use of its procedure dependent on the controlling jurisdiction's A-E licensing law, or whether other, clearly professional, A-E services are involved.

In summary, the P-Line survey here, which did not require performance by an A-E firm and which was not incidental to an A-E project, should be procured under competitive statutes and regulations, not the selection method prescribed in the Brooks Act.

The protest is denied.

W. J. ...
Comptroller General
of the United States